IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 20TH NOVEMBER 2006 / 29TH KARTHIKA 1928

ST.Rev..No. 412 OF 2006()

TA.16/2005 OF S.T.A.TRIBUNAL, ADDL.BENCH,KOZHIKODE
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PETITIONER/APPELLANT

V.BHARATHAN,
PROPRIETOR, ASHA STONE CRUSHER,
KADEMBERI, KANNUR DISTRICT.

BY ADV. SRI.V.P.SUKUMAR

RESPONDENTS: RESPONDENT

STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM.

GOVT. PLEADER SRI. GEORGEKUTTY MATHEW.

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 20/11/2006, ALONG WITH S.T.REV. 413 & 414/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R. RAMAN & K.P. BALACHANDRAN, J.

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ST. REV. NOS. 412, 413 & 414/2006

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DATED THIS, THE 20TH DAY OF NOVEMBER, 2006.

O R D E R

Raman, J.

These revisions are directed against the common order passed by the Sales Tax Appellate Tribunal, Additional Bench, Kozhikode, in T.A. Nos. 16, 17 and 18/2005, by the assessee.

2. The question that arises for consideration is as to whether petitioner is entitled to exercise the option to pay tax at compounded rate as provided for under Section 7 of the Kerala General Sales Tax Act.

3. As per Section 7(b) of the Act, notwithstanding anything contained in Sub-section (1) of Section 5, any mechanized crushing unit producing granite metals may, at its option, instead of paying tax in accordance with the provisions of that sub-sections, pay tax at the

rates followed thereunder. As per this proviso, for each crushing machine of the size not exceeding 30.48 cm. x 22.86 cm. at the rate of Rs. 12,500/- per annum, for each crushing machine of size exceeding 30.48 cm. x 22.86 cm. but not exceeding 40.64 cm. x 22.86 cm., at Rs. 25,000/- per annum and for the crushing machine of size exceeding 40.64 cm. x 22.86 cm. at Rs. 50,000/- per annum.

4. Therefore, the answer to the question would depend upon the size of the machine used in the unit. The controversy centers round the question of fact as to what is the size of the machine - whether it is of 16 x 9 " or 16 x 10". The tribunal, while disposing of the appeals T.A. Nos. 16, 17 and 18/2005 by a common order, held in para 4 as follows:

> "We have considered the contentions raised by both sides. Since the issues involved in these three appeals are common, they are disposed together. The only question to be decided is that whether the appellant is eligible for option U/S 7(1)(b) of the Act. As per the proviso to the Act, the appellant is not eligible to pay tax at compounded rate as per 7(1)(b) of the Act since the machine used is of

> size 16" x 10" which find no place in the said proviso. Considering the above position the assessments made by the assessing authority and the finding of the authority below are found in order."

5. In para 2 of the order impugned, the tribunal has referred to the various contentions raised by the authorized representative. Thereafter it proceeded to refer to the contention of the State, in para 3. It was thereafter that the tribunal dismissed the appeals as stated in para 4. None of the contentions raised by the revision petitioner were considered in detail and as a matter of fact, except the lone sentence in para 4, there is no independent finding as to what exactly is the size of the machine in question. In this connection, it has to be noticed that the specific contention of the revision petitioner before the Tribunal was that the Appellate Assistant Commissioner did not refer to the inspection report of the Sales Tax Officer dated 21.8.2004 and the finding of the Dy. Commissioner,

in his order dated 21.5.2002. Yet another contention raised by the revision petitioner was that the authorities below went wrong in not considering the statutory provisions in the Act that the machines are only in three category of 36" x 9", 16" x 9" and 12" x 9" functioning and any deviations to the contrary are creation of suppliers for attracting more business and that the stand taken by the authorities below is without appreciating the real nature of a metal crushing machine. It was also contended that there is no metal crushing machine with the dimension of 10". There are various other contentions to which we are not presently referring to, since all of them were on the point regarding the size of the machine. The contention of the Departmental representative was based on the invoice issued by the supplier and on the report of the assessing authority. But the tribunal, as final fact finding authority, ought to have entered a clear finding as to what is the size of the machine before proceeding to decide the question. In so

far as no such clear finding is entered into by the Tribunal, we are unable to decide the question of law. In such circumstances, we consider that the matter requires to be remanded to the Tribunal for such a finding and to consider the claim of eligibility for option based on such finding.

In the result, these revisions are allowed by way of remand. The order of the tribunal is set aside and the cases are remanded back to the tribunal for a fresh finding regarding the size of the machine and to decide the question of eligibility, based on such finding of fact. The tribunal shall dispose of the matter expeditiously.

P.R. RAMAN,
(JUDGE)

K.P. BALACHANDRAN,
(JUDGE)

knc/-